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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/748,997	12/29/2003	Charles E. Narad	42P8220C12	8230
8791	7590	10/18/2005	EXAMINER	
BLAKELY SOKOLOFF TAYLOR & ZAFMAN 12400 WILSHIRE BOULEVARD SEVENTH FLOOR LOS ANGELES, CA 90025-1030			HARRELL, ROBERT B	
			ART UNIT	PAPER NUMBER
			2142	

DATE MAILED: 10/18/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/748,997

Applicant(s)

NARAD ET AL.

Examiner

Robert B. Harrell

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 July 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 65-81 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 65-81 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input checked="" type="checkbox"/> Other: <u>see attached Office Action</u> . |

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1. Claims 65-81 are presented for examination.
2. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.
3. The applicant should use this period for response to thoroughly and very closely proof read and review the whole of the application for correct correlation between reference numerals in the textual portion of the Specification and Drawings along with any minor spelling errors, general typographical errors, accuracy, assurance of proper use for Trademarks TM, and other legal symbols ®, where required, and clarity of meaning in the Specification, Drawings, and specifically the claims (i.e., provide proper antecedent basis for “the” and “said” within each claim). Minor typographical errors could render a Patent unenforceable and so the applicant is strongly encouraged to aid in this endeavor.
4. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.
5. Claims 65-73 rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Since the claims do not recited “storage medium” the claims are directed to Printed Matter. (In re Beauregard (CAFC) 35 USPQ2d 1383) and MPEP 2106). This rejection can be overcome by including --storage-- on line 2 of claim 65 prior to “medium”.
6. Claims 74-81 are rejected under 35 U.S.C. 101 since the claims are directed to a software library even though in method form found only in the preamble. This rejection can be overcome by including --embodied on a computer readable storage medium-- on line 2 of claim 74 after “library”.
7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this action:

A person shall be entitled to a patent unless -

(e) the invention was described in — (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for the purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language;

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8. Claims 65-81 are rejected under 35 U.S.C. 102(e) as being anticipated by Engel et al. (6,115,393).

9. Prior to addressing the grounds of the rejections below, should this application ever be the subject of public review by third parties not so versed with the technology by anticipated access to IFW through Public PAIR (as found on <http://portal.uspto.gov/external/portal/pair>), this Office action will usually refer an applicant's attention to relevant and helpful elements, figures, and/or text upon which the Office action relies to support the position taken. Thus, the following citations are neither all-inclusive nor all-exclusive in nature *as the whole of the reference is cited* and relied upon in this action as part of the substantial evidence of record. Also, no temporal order was claimed for the acts and/or functions.

10. The grounds for rejecting, and the rejection of, the claims under 35 U.S.C. 102(e) as provided in examiner's prior 24 March 2005 Office Action continue and are hereby incorporated in this Office Action by reference.

11. The applicant argued the above cited rejection under #5 U.S.C. 102(e) by arguing in substance that Engel describes a network management system that performs a variety of operations on TCP headers such as parsing the header, "loosely" determining the state of a connection based on the header (col. 19, 25-31), and determining whether a TCP segment is received in-order or out-of-order based on the sequence number of the segment header and the headers of previously received segments. The applicants disagree, however, that Engel describes instructions to reassemble a TCP data stream as recited by claim 2 (now 65). Reassembly, as described in the specification (e.g., see pages 176-180 of the application) and as used in the industry, involves presenting the reordered bytes of application data carried by the TCP segment payloads in a connection. Nowhere does Engel describe operations on the TCP segment payloads, let alone reassembling the TCP data stream bytes. Claim 2 (now 65) and Claim 11 (now 74) both recite similar limitations regarding reassembly. For at least the reason above, Applicants respectfully request withdrawal of the rejection of renumbered claims 65, 74 and their dependent claims. **HOWEVER**, as stated by the applicant, reassembly is described in the specification (e.g., see pages 176-180 of the application) and as used in the industry, involves presenting the reordered bytes of application data carried by the TCP segment payloads in a connection for consumption at the receiving end. That is, a TCP stream traverses a variety of links out of order and sequence within a network to be "reassemble" in the correct sequence and order for consumption by the recipient. Scrambled data serves no function to the recipient unless reassembled prior to consumption. If the individual characters of this Office Action were separately mailed, one per page per envelope, received out of sequence and order (as each mail envelope would traverse different paths and speeds) this action would just be a constant string of gibberish rubbish across multiple sheets of paper. Attempting to read "War and Peace" after the pages were scattered into the wind would result in a very interesting plot unless the pages were placed back in order and sequenced per their page number (i.e., sequence number). This act of presenting the data in a logical order and original sequenced format for consumption by the recipient "reassemble" the TCP data stream. Engel's "sequence number" covered such

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reordering. Sequence numbers are akin to page numbers of a book to keep order. Even if each page were shipped via different paths, the whole book could be "reassembled" by placing the pages under each other in numerically increasing order without a bizarre plot resembling the works of Picasso. In passing, if these numbered paragraphs were mailed by examiner to the reader in a non-numerical ordered sequence in 16 envelopes, would one not instinctively "reassemble" this Office Action per the paragraph numbers to make sense of this Action?

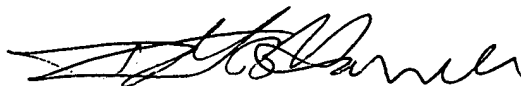
12. Since the applicant needs to embellish upon the reassemble limitations within the claims to differentiate such from the industrial standards of TCP sequencing, and because of the new 35 U.S.C. 101 rejections, this action is NOT FINAL. (RFC 1122 chapter 3.2.1.4 and 3.3) provided information on TCP sequence numbering and reassembling of TCP streams as used in the industry.

13. A shortened statutory period for response to this action is set to expire 3 (three) months and 0 (zero) days from the data of this letter. Failure to respond within the period for response will cause the application to become abandoned (see MPEP 710.02, 710.02(b)).

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert B. Harrell whose telephone number is (571) 272-3895. The examiner can normally be reached Monday thru Friday from 5:30 am to 2:00 pm and on weekends from 6:00 am to 12 noon Eastern Standard Time.

15. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew T. Caldwell, can be reached on (571) 272-3868. The fax phone number for all papers is (703) 872-9306.

16. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 305-9600.



ROBERT B. HARRELL
PRIMARY EXAMINER
GROUP 2142